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09/853,240	05/11/2001	Christine S. Vincent	26271-02	5992

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AGFA CORPORATION  
LAW & PATENT DEPARTMENT  
200 BALLARDVALE STREET  
WILMINGTON, MA 01887

[REDACTED] EXAMINER

GARCIA, ERNESTO

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3679

DATE MAILED: 07/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	09/853,240	Applicant(s)	VINCENT ET AL.
Examiner	Ernesto Garcia	Art Unit	3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 01 May 2001.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-33 is/are pending in the application.

4a) Of the above claim(s) 3,4,8,10,17 and 20-33 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2,5-7,9,11-16,18 and 19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 11 May 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention:

- I. Figure 2,
- II. Figure 3,
- III. Figure 4,
- IV. Figure 5, and,
- V. Figure 6.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Furthermore, this application contains claims directed to the following patentably distinct subspecies of transmitting a dealer purchase order.

- A. Transmitting is from an exchange to a dealer.
- B. Transmitting is from the exchange to a manufacturer.

Moreover, this application contains claims directed to the following patentably distinct subspecies of the system wherein distribution of the product to the customer is performed by:

- C. The manufacturer; or
- D. The dealer.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Joseph T. Guy on July 8, 2003 a provisional election was made with traverse to prosecute the invention of species I, and subspecies, A and D, Figure 2, claims 1, 2, 5-7, 9, 11-16, 18 and 19. Applicant in replying to this Office action must make affirmation of this election. Claims 3, 4, 8, 10, 17 and 20-33 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Drawings***

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because C<sup>1</sup> is not shown as a triangle in Fig. 3 to be consistent with a rectangle shown in Fig. 2, E<sup>1</sup> should be shown as a hexagonal in Figure 3 to be consistent with the hexagonal shown in Fig. 2, and mso<sup>3</sup> in Figure 3 should be mso<sup>n</sup>. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

Claims 1, 6, 13, 15, 16 and 19 are objected to because of the following informalities:

regarding claim 1, "manufacturer" in lines 13 and 14 should be in plural; and,

regarding claim 6, the limitation "the" in line 2 should be --a--;

regarding claim 13, the limitation --first-- should be inserted before "communication" in line 4;

regarding claim 15, the limitation --first-- should be inserted before "communication" in line 2, and the limitation "said first communication device," in line 3 should be deleted;

regarding claim 16, the limitation "said communication device;" in line 2 should be deleted; and,

regarding claim 19, the limitation "the" in line 2 should be --a--. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-7, 9, 11-16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp et al., 6,263,317.

Regarding claim 1, Sharp et al. disclose a method for e-commerce over a network, the method includes:

transmit an order entry data set **306** from a customer to an exchange **110**; the order data set comprises a product identifier **1540** and a product volume **565**;  
determine a manufacturer **130** from the product identifier **1540**;  
transmit a manufacturer specific order from the exchange **110** to the manufacturer **130** (col. 3, lines 32-36); the manufacturer specific order comprises the product identifier **1540** and the product volume **565**;

transmit a product availability request from the manufacturer **130** to a dealer **140** (col. 4, lines 12-13); the product availability request comprises the product identifier **1540** and the product volume **565**;

transmit an availability report from the dealer **140** to the manufacturer **130** (col. 4, lines 24-26); the availability report comprises a dealer price adjustment (either a commission, the shipping cost, or both);

transmit a manufacturers confirmation report from the manufacturer **130** to the exchange **110**; the manufacturers confirmation report comprises an availability index (the quantity available) and a customer price (the cost of the product); the availability index is derived from the availability report (the dealer price adjustment --the commission, the shipping cost, or both) and the customer price is derived from the dealer price adjustment (the cost of the product, and the commission, the shipping cost, or both);

transmit a product order confirmation from the exchange **110** to the customer **120** (a confirmation is often sent to the customer after internet transactions). The product order confirmation comprises the manufacturers confirmation report (the quantity available and the cost of the product);

transport a product **730** corresponding to the product identifier **1540** from the dealer **140** to the customer **120** (the dealer ships the product to the customer);

transfer purchase funds from the customer **120** to the dealer **140** (this is normal procedure; either a dealer charges the customer or the exchange charges the customer); the purchase funds corresponds to the customer price; and,

transfer manufacturer funds from the dealer **140** to the manufacturer **130** (although not specifically stated in Sharp et al., it is well known in business for a dealer to pay the manufacturer for products purchased from the manufacturer either credited or paid in advanced).

Regarding claim 2, the manufacturer specific order further comprises a customer identifier **555**.

Regarding claim 5, the network is a computer network.

Regarding claim 6, the computer network is a www.

Regarding claim 7, the method further comprises:

transmit a purchase order from the customer **120** to the exchange **110** before transport of the product **730**

Regarding claim 9, the method further comprises:

transmit a purchase confirmation from the exchange **110** to the manufacturer **130** (this step is normal procedure when the customer places a purchase order).

Regarding claim 11, the method further comprises

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a contractual price relationship between the manufacturer and the customer (applicant is reminded that when an order is placed, the price at which the customer agrees to pay is a contractual price).

Regarding claim 12, the customer price is derived from the contractual price relationship and the dealer price adjustment (the commission, the shipping cost, or both).

Regarding claims 13-16 and 18-19, given the method performed by Sharp et al., the system is made.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 703-308-8606. The examiner can normally be reached from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H Browne can be reached on 703-308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications. Any inquiry of a general nature or relating to the status of this

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application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



Lynne H. Browne  
Supervisory Patent Examiner  
Technology Center 3600

E.G.

July 17, 2003